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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212258
Party	Plaintiff Top Tobacco L.P.
Correspondence Address	ANTONY J MCSHANE NEAL GERBER & EISENBERG LLP 2 NORTH LASALLE STREET, SUITE 1700 CHICAGO, IL 60602 UNITED STATES amcshane@ngelaw.com, jcohen@ngelaw.com, temmanuelson@ngelaw.com, lpalumbo@ngelaw.com
Submission	Motion to Compel Discovery
Filer's Name	Antony J. McShane
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Signature	/Antony McShane/
Date	04/30/2014
Attachments	Motion_to_Compel_Discovery_-_P_O_P_.pdf(14028 bytes ) Exhibit A.pdf(1152202 bytes ) Exhibit B.pdf(1114062 bytes ) Exhibit C.pdf(253418 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

Top Tobacco, L.P.

Opposer

v.

Tabacalera El Artista S.R.L.

Applicant

Opposition No. 91212258

Mark: P.O.P

Serial No. 85/798,713

**MOTION TO COMPEL DISCOVERY**

Pursuant to Federal Rule of Civil Procedure 37(a)(3)(b) and 37 C.F.R. §2.120, Opposer, Top Tobacco, L.P., by its attorneys, hereby requests that the Board enter an order compelling Applicant, Tabacalera El Artista S.R.L., to respond fully and without objection to Opposer's first set of discovery requests.

Opposer has been forced to file the instant motion as a result of Applicant's failure to comply with the rules of procedure, to meet its discovery obligations, or otherwise respond to Opposer's attempt to confer with Applicant regarding discovery in these proceedings. More specifically, Applicant, has failed to timely serve its written responses to Opposer's First Set of Interrogatories (the "Interrogatories") and First Requests for Production of Documents to Applicant (the "Document Requests"), and has been unresponsive to Opposer's counsel's numerous attempts to reach Applicant regarding Applicant's outstanding discovery obligations.

In support of its motion, Opposer states:

1. Opposer served the Interrogatories and the Document Requests on Applicant by First Class Mail on January 21, 2014. See Exhibits A and B, respectively. Applicant's responses

were therefore due on February 25, 2014. Applicant failed to respond to Opposer's discovery requests by that due date.

2. On March 10, 2014, Opposer's counsel sent an email to Applicant's counsel noting that Applicant's responses to the Interrogatories and Document Requests were overdue. On April 11, 2014, Opposer sent a second email to Applicant's counsel requesting responses to Opposer's discovery requests and informed Applicant that it would be forced to seek Board intervention if it did not receive a response from Applicant by April 18, 2014. Copies of Opposer's emails to Applicant's counsel are attached collectively as Exhibit C.

3. To date, Opposer still has not received any responses to its Interrogatories, Document Requests, or correspondence, or otherwise received any communication whatsoever since receiving Applicant's Initial Disclosures, which were sent via first class mail on January 13, 2014.

4. Rule 37(a)(3)(B) of the Federal Rules of Civil Procedure entitles a party seeking discovery to move for an order compelling an answer or document production if a party fails to answer an interrogatory under Rule 33 or if a party fails to respond to a request for documents under Rule 34 of the Federal Rules of Civil Procedure. *See also* TBMP § 523 and 37 C.F.R. §2.120(e). Moreover, "a party who fails to respond to a request for discovery during the time allowed therefor is deemed by the Board to have forfeited his right to object to the request on its merits unless he can show that such failure was occasioned by excusable neglect." *MacMillan Bloedel Limited v. Arrow-M Corporation*, 203 USPQ 952 (TTAB 1979), *citing Crane Co. v. Shimano Industrial Co., Ltd.*, 184 USPQ 691 (TTAB 1975).

5. Here, Opposer has not received Applicant's responses to the Interrogatories or the Document Requests, and Applicant's repeated failure to respond to Opposer is not excusable.

Applicant also has not served any discovery requests or otherwise communicated with Opposer since January 13, 2014.

6. Opposer, through its attorneys, has made a good faith effort through correspondence to resolve with Applicant the need for Applicant to respond to the Interrogatories and the Documents Requests without Board involvement, but has been unable to do so due to Applicant's refusal to respond to Opposer's counsel.

7. In view of Applicant's failure to provide Opposer with any responses to the Interrogatories and the Document Requests or any indication as to when such responses would be forthcoming, Opposer respectfully requests that the Board Order Applicant to serve its responses to Opposer, without objection, within 10 days of the entry of such Order.

WHEREFORE, for the foregoing reasons, Opposer respectfully requests that the Board enter an Order compelling Applicant to respond in full to Opposer's discovery requests without objection within 10 days of the entry of such Order, and granting such other relief as the Board deems appropriate.

Respectfully submitted,

Date: April 30, 2014

/Antony J. McShane/  
One of the Attorneys for Opposer,  
Top Tobacco L.P.

Antony J. McShane  
Andrea S. Fuelleman  
Neal, Gerber & Eisenberg LLP  
2 North LaSalle Street, Suite 1700  
Chicago, Illinois 60602  
312.269.8000

**CERTIFICATE OF SERVICE**

I, Andrea S. Fuelleman, hereby certify that I served a copy of the foregoing ***Motion to Compel Discovery*** to Applicant upon:

Darren S. Rimer  
Rimer & Mathewson LLP  
30021 Tomas, Suite 300  
Rancho Santa Margarita, California, 92688

by depositing said copy in a properly addressed envelope, First Class postage prepaid, and depositing same in the United States mail at Two North LaSalle Street, Chicago, Illinois, on the date noted below:

Date: April 30, 2014

/Andrea S. Fuelleman/  
One of the Attorneys for Opposer,  
Top Tobacco, L.P.

NGEDOCs: 2169379.1

# **EXHIBIT A**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Top Tobacco, L.P.

Opposer

v.

Tabacalera El Artista S.R.L.

Applicant

Opposition No. 91212258

Mark: P.O.P

Serial No. 85/798,713

**OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer Top Tobacco L.P., hereby requests that Applicant, Tabacalera El Artista S.R.L., serve Opposer's attorneys sworn answers to the interrogatories set forth below within thirty (30) days after the service hereof. These interrogatories are intended to be continuing in nature and any information which may be discovered subsequent to the service of Applicant's initial answers should be brought to the attention of Opposer's attorneys through supplemental answers within thirty (30) days following such discovery.

**Interrogatories**

1. State the full name and place of incorporation or organization of all corporations or other legal entities that are a parent, subsidiary or affiliate of Applicant, or that are controlled by Applicant, and all corporations or other legal entities that exert control over Applicant and any of their respective parents, subsidiaries or affiliates.

2. State the full name of each business, company, person, or other entity affiliated with the Applicant that has used the mark P.O.P. and for each, identify its principal(s) and, if applicable, its state or country of organization.

3. Identify each transaction by which it is claimed that any rights or license in the P.O.P. mark have passed to Applicant, including setting forth the date of each such transaction and identifying the parties to the transaction and all documents related thereto.

4. Identify by common commercial name each and every product marketed, distributed, sold or offered for sale or intended to be marketed, distributed, sold or offered for sale by Applicant under or in connection with the P.O.P. mark and with respect to each such product, identify:

- (a) the inclusive dates of use of the mark with such products (if applicable)
- (b) the geographic scope of such use;
- (c) the price at which the product is sold or intended to be sold;
- (d) the annual volume of sales of the product in both dollars and units;
- (e) unit sizes in which the product is sold or intended to be sold;
- (f) each class of purchasers or intended purchasers of the product;
- (g) the channels of trade by which the product will be, is or has been offered or sold;
- (h) all types of stores or forums in which the products will, are or have been offered or sold; and
- (i) the persons most knowledgeable of such use or intended use and all documents relating thereto.

5. With respect to each product identified in response to Interrogatory No. 4, identify all means by which the product will be, is being or has been advertised or promoted, set forth the annual expenditures for each and the persons most knowledgeable thereof.



6. Identify every trade show at which each product identified in response to Interrogatory No. 4 will be, is or has been advertised or promoted.

7. Identify each employee or agent of Applicant or independent contractor that has, or will have primary responsibility for the following services or functions with respect to each product identified in response to Interrogatory No. 4, and for each such entity, describe in detail the services that have been, are being or will be performed and the inclusive dates of such services:

- (a) package design
- (b) product design
- (c) market research
- (d) advertising and promotion

8. Identify all persons involved on behalf of the Applicant in planning the past, current and future advertising, marketing, promotion, distributing and selling of products under or in connection with the P.O.P. mark.

9. Identify each press or publicity release concerning any product promoted in association with the P.O.P. mark, issued or published, caused to be issued or published, or intended to be issued or published and for each such release, identify all publications or other media in or through which information contained therein was or will be disseminated and the person(s) responsible therefor.

10. Explain the reason(s) for Applicant's adoption of the P.O.P. mark for each product identified in response to Interrogatory No. 4 as well as the procedure followed by Applicant in its decision to adopt such designation for each product, and identify all persons who

participated in each such decision as well as all documents relating thereto, including but not limited to any trademark search reports.

11. Identify each term, symbol, or designation other than the P.O.P. mark considered for use on or in connection with each product identified in response to Interrogatory No. 4, and state whether such term, symbol or designation was ever used in association with any other products, explain why or why not, and identify the person(s) most knowledgeable thereof and all documents relating thereto.

12. Describe in detail each poll, survey, consumer study or market research effort initiated by or on behalf of Applicant relating in any way to the P.O.P. mark and identify all persons involved in or knowledgeable of such poll, survey, consumer study or market research, as well as all documents relating thereto.

13. Describe in detail Applicant's awareness and knowledge of Opposer, Opposer's business activities and Opposer's Marks prior to Applicant's selection and adoption of the P.O.P. mark and the filing of its Application for the P.O.P. mark, and identify (a) the person(s) most knowledgeable thereof, and (b) all documents relating thereto.

14. State whether Applicant has ever received any mail, inquiries, complaints, requests for refunds, orders, checks, or other communications which in any manner were intended for Opposer or which in any way indicated an association or connection between Applicant and Opposer, and if so, with respect to each:

- (a) identify:
  - (i) each such caller, sender, addresser, or communicator;
  - (ii) the date and place of occurrence;

- (iii) the substance of such communication;
- (iv) the person receiving the communication;
- (b) state whether or not any response to, or record of, the communication was made; and
- (c) identify all persons most knowledgeable thereof.

15. With respect to the P.O.P. mark, state whether Applicant has ever received any objection to its use or registration of the designation other than the instant proceedings, and with respect to each such objection, identify (a) the nature and basis of the objection, (b) when the objection was made, the disposition of the objection, (c) the persons most knowledgeable about the objection, and (d) all documents relating to the objection.

16. State whether Applicant has ever objected to the use or registration of any other mark comprised of the mark P.O.P. on the ground of confusing similarity, and if so, with respect to each such objection, identify (a) the mark or term to which the objection was made, (b) the nature of the objection, (c) the disposition of the objection, (d) the persons most knowledgeable about the objection, and (e) all documents relating to the objection.

17. Identify by title, index number, and tribunal each civil action or inter parties proceeding in which Applicant or any business, company, or other entity identified in response to Interrogatory No. 1 has been or is a party which refer or relate in any way to a designation comprised of the mark P.O.P., including all amendments and modifications thereto, and identify (a) the persons most knowledgeable thereof, and (b) all documents relating thereto.

18. Identify all agreements to which Applicant or any business, company, or other entity identified in response to Interrogatory No. 1 has been or is a party which refer or relate in



any way to a designation comprised of the mark P.O.P., including all amendments and modifications thereto, and identify (a) the persons most knowledgeable thereof, and (b) all documents relating thereto.

19. Identify, on an interrogatory-by-interrogatory basis, each person furnishing information upon which any part of any answer to these interrogatories is based, indicate the parts based on information so furnished by each such person, and whether such information is within the personal knowledge of such person, and if not within such person's knowledge, identify the source of the information so furnished.

#### **Definitions and Instructions**

As used herein, the words and phrases set out below shall have the following meaning or meanings prescribed for them:

1. The term "Opposer" shall mean Top Tobacco L.P., as well as its respective subsidiaries, affiliates, divisions, officers, directors, employees, licenses, agents and assignees

2. The term "Applicant" shall mean Tabacalera El Artista S.R.L. and its respective officers, directors, subsidiaries, divisions, representatives, employees, licensors, licensees, agents and assignees.

3. The term "person" shall mean any individual, firm, partnership, corporation, proprietorship, association, or other organization or entity.

4. The term "identify" shall mean:

- (a) in connection with natural persons, state their full names, titles and job descriptions, if applicable, and their present or last known business and home addresses;
- (b) in connection with firms, partnerships, corporations, proprietorships, associations or other entities, state their name, and each of their present or last known addresses;

- (c) in connection with documents, describe the documents, setting forth their dates, titles, authors, addresses, parties thereto and the substance thereof, with such reasonable particularity as would be sufficient to permit them to be sought by subpoenas duces tecum or under the provisions of Rule 34 of the Federal Rules of Civil Procedure. Documents to be identified shall include both documents in your possession, custody and control and all other documents of which you have knowledge;
- (d) in connection with oral statements and communications, (i) state when and where they were made; (ii) identify each of the makers and recipients thereof as well as all others present at the time such statement or communication was made; (iii) indicate the medium of communication; and (iv) state their substance.

5. The term "documents" shall mean any and all writings of any nature whatsoever or other means by which information is retained in retrievable form, as well as drafts and all non-identical copies thereof, including but not limited to memoranda, stenographic or handwritten notes, contracts, agreements, records, audio and video recordings, correspondence, communications, reports, studies, summaries, surveys, statistical compilations, minutes, charts, manuals, brochures, schedules, price lists, telegrams, teletypes, facsimiles, e-mail, signage, certificates of registration, labels, specimens, writings, sketches, and computer disks, and any other documents as defined in Rule 34 of the Federal Rules of Civil Procedure.

6. The singular shall include the plural and the plural shall include the singular.

7. A masculine, feminine or neutral pronoun shall not exclude the other genders.

8. The terms "and" as well as "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the interrogatory all responses which might otherwise be construed to be outside its scope.


9. All objections or answers to interrogatories which fail or refuse to fully respond to any interrogatory on the ground of any claim of privilege of any kind whatever shall:

- (a) state the nature of the claim of privilege;

- (b) state all facts relied upon in support of the claim of privilege or related thereto;
- (c) identify all documents related to the claim of privilege;
- (d) identify all persons having knowledge of any facts related to the claim of privilege; and
- (e) identify all events, transactions or occurrences related to the claim of privilege.

Respectfully submitted,

Date: January 21, 2014

  
One of the Attorneys for Opposer,  
Top Tobacco L.P.

Antony J. McShane  
Andrea S. Fuelleman  
Neal, Gerber & Eisenberg LLP  
2 North LaSalle Street, Suite 1700  
Chicago, Illinois 60602  
312.269.8000



**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing *Opposer's First Set of Interrogatories to Applicant* upon:

Darren S. Rimer  
Rimer & Mathewson LLP  
30021 Tomas, Suite 300  
Rancho Santa Margarita, California, 92688

by depositing said copy in a properly addressed envelope, First Class postage prepaid, and depositing same in the United States mail at Two North LaSalle Street, Chicago, Illinois, on the date noted below:

Date: January 21, 2014



One of the Attorneys for Opposer,  
Top Tobacco, L.P.

NGEDOCs: 2143005.1

# **EXHIBIT B**



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Top Tobacco, L.P.

Opposer

v.

Tabacalera El Artista S.R.L.

Applicant

Opposition No. 91212258

Mark: P.O.P

Serial No. 85/798,713

**OPPOSER'S FIRST SET OF REQUESTS  
FOR THE PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer Top Tobacco L.P., hereby requests that Applicant, Tabacalera El Artista S.R.L., produce to Applicant's attorneys the items described hereafter for inspection and copying at the offices of Neal, Gerber & Eisenberg LLP, Two North LaSalle Street, Suite 1700, Chicago, Illinois, 60602, within thirty (30) days after the service hereof. These document requests are intended to be continuing in nature and shall include documents which are discovered subsequent to any initial compliance herewith. Such later discovered documents shall be produced within thirty (30) days after their discovery.

**Requests for Production**

1. Documents sufficient to fully describe the following:
  - (a) when and where Applicant first obtained a license to do business, was registered to do business or was qualified to do business;
  - (b) all other places where Applicant is licensed to do business, is registered to do business or is qualified to do business; and
  - (c) all corporations or other entities in which Applicant has a controlling interest.
2. Documents sufficient to identify:

- (a) all product(s) offered or intended to be offered by Applicant under the P.O.P. mark;
- (b) the manner in which Applicant uses or intends to use the P.O.P. mark;
- (c) the geographic scope of Applicant's efforts or anticipated efforts to market, sell or otherwise provide any product(s) under the P.O.P. mark;
- (d) the date on which Applicant first marketed or offered to provide or intends to first market or otherwise provide any product(s) under the P.O.P. mark; and
- (e) the date on which Applicant first sold or provided or intends to first sell or provide any product(s) under the P.O.P. mark in: (i) intrastate commerce in the United States; (ii) interstate commerce in the United States; and (iii) foreign commerce (if applicable)

3. Documents evidencing, referring, or relating to when Applicant first used the P.O.P. mark or when Applicant intends to first use the P.O.P. mark anywhere in the United States.

4. Documents sufficient to identify the channels of trade through which Applicant distributes or intends to distribute products or offers or intends to offer products under the P.O.P. mark including, without limitation, documents sufficient to identify the customers, sales agents, dealerships, distributors or other outlets through which its products are sold or are intended to be sold under the P.O.P. mark.

5. For each and every product offered or intended to be offered by Applicant under the P.O.P. mark, documents sufficient to identify:

- (a) the prices the Applicant charges or intends to charge for each such product;
- (b) Applicant's annual sales (in units and dollars) of each such product, by state; and
- (c) Applicant's current inventory of each such product.



6. Documents evidencing, referring, or relating to any sales or marketing plans for products sold or intended to be sold under the P.O.P. mark.

7. All documents that identify, constitute, or relate to:

- (a) the manner by which Applicant advertises or promotes, has advertised or promoted, or intends to advertise or promote products under the P.O.P. mark;
- (b) any publications in which Applicant has placed or intends to place print advertisements, articles or other information concerning products Applicant offers or intends to offer under the P.O.P. mark; and
- (c) any Internet website referencing Applicant's use of the P.O.P. mark, including but not limited to printouts of all such website pages.

8. Documents sufficient to identify the total annual expenditures incurred by Applicant for all advertising and marketing using or relating to the P.O.P. mark.

9. Forecasts for all anticipated expenditures to be incurred by Applicant for advertising and marketing using or relating to the P.O.P. mark.

10. All documents that disclose, describe, or otherwise relate to:

- (a) the characteristics or profiles of the type of person or entity that purchases or otherwise receives products provided by Applicant under the P.O.P. mark or the type of person or entity to whom Applicant intends to market and sell products under the P.O.P. mark;
- (b) any incident(s) wherein any persons or entities have indicated that they understood or believed that Opposer's business or products, and Applicant's business or products, were in any way affiliated, associated or connected with one another; and
- (c) with regard to any such incident(s), produce all documents that disclose, describe or are related to:
  - (i) the place of such incident;
  - (ii) the date of such incident;

- (iii) the identity of all persons or entities involved in or having knowledge of such incident, and the nature of their involvement or knowledge;
- (iv) the products involved in such incident;
- (v) the nature of the incident;
- (vi) how the incident came to the attention of Applicant; and
- (vii) efforts to ascertain or monitor such incidents.

11. All documents constituting or relating to:

- (a) misdirected correspondence (including electronic mail) or telephone calls received by Applicant that appear to be intended for Opposer, and
- (b) Opposer or Opposer's product, including but not limited to emails, message slips and telephone logs.

12. All documents evidencing, referring, or relating to the selection or adoption of the P.O.P. mark.

13. Documents sufficient to identify any person employed by or associated with Applicant who participated in or was involved in or responsible for the selection or adoption of the P.O.P. mark, and with respect to each person so identified, the nature and scope of his or her involvement.

14. All documents that disclose, describe, constitute or otherwise relate to:

- (a) whether Applicant has conducted or caused to be conducted a search, investigation or other inquiry, including any trademark search in the United States Patent and Trademark Office, concerning whether any marks similar to the P.O.P. mark had been or were being used by other parties, or whether other parties had applied for or received registrations for such designations;
- (b) the decision by Applicant to apply for registration of the P.O.P. mark, including but not limited to all documents related to any discussions concerning such decision(s); and



- (c) all documents filed with either the United States Patent and Trademark Office or any state's trademark office concerning any attempted registration by Applicant of any mark comprised in part or in whole of the mark P.O.P.

15. All documents that disclose, describe, constitute or otherwise relate to:

- (a) statements or reports concerning the quality or perceived standards of quality of any products or services offered or intended to be offered by Applicant under the P.O.P. mark ;
- (b) any potential, threatened or actual litigation involving any products offered or to be offered by Applicant under the P.O.P. mark; and
- (c) any complaints concerning any products distributed, marketed or sold at any time by Applicant.

16. Produce all documents evidencing, referring, or relating to:

- (a) use by any third-party of any mark comprising the mark P.O.P. or any other mark that is visually or phonetically similar thereto; and
- (b) any license or assignment agreement(s) to which Applicant is a party concerning the P.O.P. mark.

17. Representative specimens of packaging, wrappings, promotional material, advertisement, point of sale display, sign, trade show display, label, or other material that depicts or describes every product marketed, distributed, sold or offered for sale, or intended to be marketed distributed, sold or offered for sale, by Applicant under the P.O.P. mark, including all drafts, mock-ups and prototypes thereof.

18. Produce all documents evidencing, referring, or relating to the development, production, or placement of all advertisements, either actual or considered, depicting or describing any products marketed, distributed, sold, or offered by Applicant under the P.O.P. mark, or intended to be marketed, distributed, sold or offered by Applicant under the P.O.P. mark.

19. Produce all documents evidencing, referring, or relating to test marketing conducted by Applicant, or on its behalf, of any products offered or intended to be offered under the P.O.P. mark, including but not limited to any market surveys, analyses, or studies concerning the promotion, use, potential sale, or sale of such product.

20. All documents consulted in the preparation of, or which are requested to be identified in, Applicant's responses to Opposer's First Set of Interrogatories to Applicant.

21. All documents relating to any document retention policy of Applicant or the destruction of documents by Applicant at any time.

#### **Definitions and Instructions**

As used herein, the words and phrases set out below shall have the following meaning or meanings prescribed for them:

1. The term "Opposer" shall mean Top Tobacco L.P., as well as its respective subsidiaries, affiliates, divisions, officers, directors, employees, licenses, agents and assignees.

2. The term "Applicant" shall mean Tabacalera El Artista S.R.L. and its respective officers, directors, subsidiaries, divisions, representatives, employees, licensors, licensees, agents and assignees.

3. The term "person" shall mean any individual, firm, partnership, corporation, proprietorship, association, or other organization or entity

4. The term "documents" shall mean any and all writings of any nature whatsoever or other means by which information is retained in retrievable form, as well as drafts and all non-identical copies thereof, including but not limited to memoranda, stenographic or handwritten notes, contracts, agreements, records, audio and video recordings, correspondence,



communications, reports, studies, summaries, surveys, statistical compilations, minutes, charts, manuals, brochures, schedules, price lists, telegrams, teletypes, facsimiles, e-mail, signage, certificates of registration, labels, specimens, writings, sketches, and computer disks, and any other documents as defined in Rule 34 of the Federal Rules of Civil Procedure.

5. The singular shall include the plural and the plural shall include the singular.

6. A masculine, feminine or neutral pronoun shall not exclude the other genders.

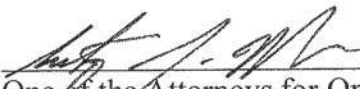
7. The terms "and" as well as "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the document request all responses which might otherwise be construed to be outside its scope.

8. All objections to document requests in which Opposer fails or refuses to fully respond on the ground of any claim of privilege of any kind whatever shall:

- (a) state the nature of the claim of privilege;
- (b) state all facts relied upon in support of the claim of privilege or related thereto;
- (c) identify all documents related to the claim of privilege;
- (d) identify all persons having knowledge of any facts related to the claim of privilege; and
- (e) identify all events, transactions or occurrences related to the claim of privilege.

Respectfully submitted,

Date: January 21, 2014

  
\_\_\_\_\_  
One of the Attorneys for Opposer,  
Top Tobacco L.P.

Antony J. McShane  
Andrea S. Fuelleman  
Neal, Gerber & Eisenberg LLP  
2 North LaSalle Street, Suite 1700  
Chicago, Illinois 60602  
312.269.8000

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing *Opposer's First Set of Requests for the Production of Documents* upon:

Darren S. Rimer  
Rimer & Mathewson LLP  
30021 Tomas, Suite 300  
Rancho Santa Margarita, California, 92688

by depositing said copy in a properly addressed envelope, First Class postage prepaid, and depositing same in the United States mail at Two North LaSalle Street, Chicago, Illinois, on the date noted below:

Date: January 21, 2014



One of the Attorneys for Opposer,  
Top Tobacco, L.P.

NGEDOCs: 2143013.1



# **EXHIBIT C**

**Fuelleman, Andrea S.**

---

**From:** Fuelleman, Andrea S.  
**Sent:** Monday, March 10, 2014 4:58 PM  
**To:** Darren S. Rimer  
**Cc:** McShane, Antony J.  
**Subject:** Proceeding No. 91212258 for P.O.P.

Dear Darren,

As you may recall, your client's responses to Top Tobacco's First Set of Interrogatories and Requests for Documents were due February 25, 2014. We have not received any response from you regarding this matter. Please let us know when we can expect to receive a response to our client's discovery requests.

We anticipate your prompt response.

Best,  
Andrea

**Andrea S. Fuelleman**  
Attorney at Law  
NEAL • GERBER • EISENBERG  
Neal, Gerber & Eisenberg LLP  
Two North LaSalle Street • Suite 1700  
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312.269.5347 phone • 312.980.0861 fax  
[afuelleman@ngelaw.com](mailto:afuelleman@ngelaw.com) • [www.ngelaw.com](http://www.ngelaw.com)

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**Fuelleman, Andrea S.**

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**From:** Fuelleman, Andrea S.  
**Sent:** Friday, April 11, 2014 10:52 AM  
**To:** Darren S. Rimer  
**Cc:** McShane, Antony J.  
**Subject:** RE: Proceeding No. 91212258 for P.O.P.

Dear Darren,

Following up on our March 10, 2014 email regarding your client's responses to Top Tobacco's First Set of Interrogatories and Requests for Documents, we have still not received any response from you regarding this matter.

These responses, which were due on February 25, 2014, are significantly past due. If we do not receive a response by April 18, 2014, we will be forced to file a motion to compel discovery responses.

Regards,  
Andrea

**Andrea S. Fuelleman**  
Attorney at Law  
312.269.5347 phone • 312.980.0861 fax  
[afuelleman@ngelaw.com](mailto:afuelleman@ngelaw.com)

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**From:** Fuelleman, Andrea S.  
**Sent:** Monday, March 10, 2014 4:58 PM  
**To:** Darren S. Rimer  
**Cc:** McShane, Antony J.  
**Subject:** Proceeding No. 91212258 for P.O.P.

Dear Darren,

As you may recall, your client's responses to Top Tobacco's First Set of Interrogatories and Requests for Documents were due February 25, 2014. We have not received any response from you regarding this matter. Please let us know when we can expect to receive a response to our client's discovery requests.

We anticipate your prompt response.

Best,  
Andrea

**Andrea S. Fuelleman**  
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